
THE BRECHNER REPORT

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Open government panel holds first meetings

TALLAHASSEE – Journalists, public officials and citizens spoke out on open government issues in late August at the first set of hearings by the Commission on Open Government.

The nine-member commission, appointed in July by Gov. Charlie Crist, will use the input from the hearings to make legislative recommendations by the end of 2008.

Speakers at the two-day hearing

urged more transparency in government, including daily posting of state agency e-mails.

Gov. Crist said he supports the idea as long as it does not create security problems, according to the *St. Petersburg Times*. However, commission member Renee Lee recalled

her experience with a similar system in Charlotte County and warned of offensive content and false rumors spread through e-mail.

Other concerns shared with the commission included local officials' refusal to fulfill records requests, limits on inter-agency sharing of information and a lack of compliance with the Open Meetings Law.

"Our Sunshine Law is under attack, and so is open government," said Pat Yack, editor of *The Florida Times-Union* (Jacksonville).

Future hearings for the Commission on Open Government are planned for Orlando, Sarasota and Fort Lauderdale.

ACCESS
LAWS

Argument in false light suits delayed until March

TALLAHASSEE – The Florida Supreme Court was set to hear oral arguments Oct. 10 in the false light invasion of privacy case involving Pensacola businessman Joe Anderson Jr. and the *Pensacola News-Journal*, but the Court decided to delay arguments until March 6, 2008, so that arguments could be heard at the same time as the case *Jews for Jesus Inc. v. Edith Rapp*.

The outcomes of the two appeals to the state's highest court should provide

some guidance to Florida attorneys as to the status of false light, which provides a cause of action when published materials portray a person in a "false light" even if the information is true.

The First District Court of Appeal in *Anderson* reversed an \$18.2 million verdict in Anderson's favor, holding that the case was essentially a libel claim and therefore subject to libel's two-year statute of limitations. False light claims have a four-year statute of limitations as "unspecified torts" in Florida.

PRIVACY

Sealed criminal records reach high

ORLANDO – A record number of people were successful last year in getting their criminal records sealed or erased, according to data from the Florida Department of Law Enforcement. Of the 15,000 individuals who requested their arrest or court records be sealed, 9,516 succeeded. That is three times the number reported ten years ago.

The FDLE employs more than a dozen full-time workers to screen applications from individuals who want their records sealed or erased. Many applicants were

arrested but never charged, or the charges were dropped.

However, some applicants who were charged, entered a plea and served a sentence still had their records expunged. The *Orlando Sentinel* reported that in

Central Florida, a man accused of pulling a gun on another driver and a man who had sex with a 13-year-old girl were examples of sealed cases.

Sealed cases are still available to the FDLE, law enforcement agencies and some state agencies.

COURTS

Center celebrates 30th anniversary

Thank you to all who were able to attend the 30th anniversary celebration of The Brechner Center for Freedom of Information. This issue of *The Brechner Report* features a special report on the Florida FOI Summit. For more information about the Summit, visit www.brechner.org.

We appreciate your support and look forward to another 30 years of service, advocacy and research in the field of open government laws.

FEMA releases aid information to newspaper

FORT MYERS – Two months after a court ruling in its favor, *The News-Press* (Fort Myers) finally received disaster aid information from the Federal Emergency Management Agency (FEMA).

In June, a panel for the 11th U.S. Circuit Court of Appeals ruled that FEMA must provide *The News-Press* and other Florida newspapers with addresses of households that received disaster aid between 1998

and 2004.

Before it released the information, FEMA spent \$1.1 million to notify the aid recipients that their addresses would be disclosed. Based on the first set of data released by FEMA Aug. 27, *The News-Press* found that many Floridians received less than \$10 in aid. Analysis of the information also showed that of more than one million people who requested FEMA

aid after the devastating 2004 hurricanes, fewer than one in three received cash assistance.

In opposing the release of the information, the government argued that disclosure would violate the privacy of aid recipients, stigmatize victims and potentially be used for identity theft. The media argued that specific information was necessary to investigate claims of abuse of the system.

FIRST AMENDMENT

Official loses objection to oath

TEQUESTA – The Village of Tequesta is seeking \$69,000 in attorney's fees from one of its council members following a legal dispute over the village's oath of office. Council member Basil Dalack won the uncontested council seat in 2006, but he objected to the oath of office, saying the pledge to support the government violated his First Amendment rights by forcing him to say he supported President Bush and the war.

When the village refused to alter its oath of office, Dalack filed suit in federal court, where he lost at the trial level. The 11th Circuit Court of Appeals ruled against Dalack in April 2006, and in July it denied his request for a rehearing.

Tequesta has spent \$130,539 defending Dalack's suit. The village decided not to pursue reimbursement for attorney's fees at the trial level because fees are often very difficult to obtain, said Ed Guedes, attorney for the village. However, officials later felt Dalack's arguments were more and more frivolous, and decided to pursue the fees.

"Because the obligations a public official undertakes constitute a matter of great national importance . . . I have a moral obligation to petition the Supreme Court of the United States to reverse those decisions," Dalack said in a statement, according to *The Palm Beach Post*.

Lawmaker seeks disclosure of Fla. bridge inspection reports

NICEVILLE – The Office of Open Government has been charged with helping reach a compromise between state transportation officials and Sen. Don Gaetz regarding access to bridge inspection reports.

Bridge inspectors are working to complete a status report on the condition of Florida's more than 11,500 bridges, according to the *Tallahassee Democrat*.

Transportation security chiefs have refused to release the reports, citing a 2002 anti-terrorism law that keeps diagrams and blueprints of bridges and other public structures secret.

"I don't think the intent of that legislation was to treat bridge inspection

reports like the secret Bush family recipe for baked beans," Gaetz, a Niceville republican, said.

Open government advocate Barbara Petersen, who worked with lawmakers to narrowly craft the law, says the Florida Department of Transportation

ACCESS RECORDS

is misinterpreting the law. And even though bridge inspection reports contain diagrams of bridges, those can be redacted, Petersen

said.

The Office of Open Government and the DOT "are trying to find a balance that both protects the safety of Florida's drivers while protecting the integrity of our domestic security," said Erin Isaac, spokeswoman for Gov. Charlie Crist.

Museum adjusts to Sunshine Law

MIAMI BEACH – A South Florida museum is learning to operate in the Sunshine after the Attorney General's Office mediated on behalf of a freelance journalist investigating a controversial exhibit.

The Bass Museum's board members and trustees recently learned that their board meetings must be open, members can only discuss Bass business in public, and museum records must be open to the public, according to the *The SunPost* (Miami). The Bass Museum has a \$2.7 million annual budget, with approximately \$1.5 million of that funded by Miami taxpayers.

"Because the Friends of the Bass have been using museum staff, they do have to come into the Sunshine," said Gary Farmer, cultural affairs program manager for the city of Miami Beach and interim director of the museum. "If they were acting with their own staff like most Friends [type] groups, they wouldn't have to act in the Sunshine."

Freelance journalist and art historian Justo Sanchez contacted the Attorney General's Office after he was unable to get board minutes from the Bass related to the approval of the exhibit titled *The Private Jade Collection of Her Imperial Highness Princess Thi-Nga of Vietnam*. Sanchez is investigating whether the exhibit is a conflict of interest, because Princess Thi-Nga is president of the Friends of the Bass and chairperson of the Bass Board of Trustees.

When the Attorney General's Office approached the Bass in April to participate in its public records mediation program, the museum declined to participate but did give Sanchez the records he requested.



USA Today Editor Ken Paulson delivered the Sept. 20 keynote address at the Summit.

Paulson announces new project

Expressing concerns regarding the future of a free press and Americans' views of the news media, *USA Today* Editor Ken Paulson advocated the importance of the First Amendment during his keynote address at the 2007 Florida FOI Summit. Paulson spoke to a crowd of more than 200 journalists, scholars, attorneys, students and citizens to close out the first day of summit activities.

Paulson announced that he is working with news media groups including the

Knight Foundation and the American Society of Newspaper Editors on a new idea they are calling "The Liberty Tree Initiative." He said the idea is to start a nationwide campaign that would market the First Amendment to the public.

However, journalists must accept some of the blame for the recent downturn in public approval, Paulson said, adding that news media outlets are sometimes far too hesitant to admit their mistakes and that does not improve rapport with the public.

Panels encourage discussion, debate of FOI issues

The Florida FOI Summit featured panelists from across the country who traveled to Gainesville to discuss freedom of information laws. The conference began on Thursday, Sept. 20, with a panel moderated by Gregg Thomas (Thomas & LoCicero). The panel featured FOI advice from experts Pat Gleason (Director of Cabinet Affairs and Special Counsel for Open Government for Gov. Charlie Crist); Jon Kaney (Cobb & Cole); Jane Kirtley (University of Minnesota); Jim Leusner (*Orlando Sentinel*); and Philip Ward (*South Florida Sun-Sentinel*). Panelists discussed access to autopsy photos, the best way to build rapport with records custodians, and the lengthy delays that often accompany requests under the Freedom of Information Act.

Professor Kirtley focused on global FOI issues during her Friday morning presentation, "Windows on the World: A Global Perspective on FOI." Florida was the focus of another special presentation Friday morning, with JoAnn Carrin (director of the Office of Open Government), Pat Gleason, Simone Marsteller (associate deputy attorney

general), and Barbara Petersen (president of the First Amendment Foundation) discussing "The 'Real' Sunshine State: FOI in Florida."

Also on Friday, attendees were able to choose from three different breakout sessions. "Capitol Conversations: Working with Florida Legislators" featured Barbara Petersen, Professor and Director of the Center for Governmental Responsibility Jon Mills, and *Orlando Sentinel* State/National Editor Bob Shaw.

"FOI on the Horizon: A National Outlook on FOI Issues" offered a national perspective on open government laws. This panel was led by Charles Davis, executive director of the National Freedom of Information Coalition; John Dunbar, reporter for The Associated Press; and Pete Weitzel, coordinator of the Coalition for Journalists for Open Government.

The third breakout session, titled "Top 10 Tools for Your FOI Toolbox" offered practical tips for taking advantage of FOI laws. Professor Sandra Chance, executive director of The Brechner Center, moderated the session. Panelists included *Florida Times-Union* Opinions Editor Joe Adams, Attorney Carol LoCicero, Florida Society of Newspaper Editors Executive Director Gil Thelen, and WikiFOIA Director Sara Key.

Everyone attending the Summit had the opportunity to weigh in on the issues during a small group session Friday afternoon. Prof. Chance will present the recommendations of the small groups to the Commission on Open Government.

The conference was brought to a close with student presentations on the history of Florida's Open Meetings Law and the Top 30 FOI stories, followed by an update on the MBCAP by Dr. Bill F. Chamberlin.



Attorneys Gregg Thomas (left) and Jon Kaney (right) offered their expertise during the opening session of the FOI Summit.



Pete Weitzel and Charles Davis discuss national FOI issues during a breakout session Friday.



JoAnn Carrin and Simone Marsteller participated in a panel on Florida FOI issues Friday morning.



Drew Shenkman and Florence Snyder Rivas prepare recommendations for improving access laws during a small group session Friday.

CENTER HONORS INDIVIDUAL EFFORTS

Second FOI Hall of Fame inducted at Summit



Florida Attorney General Bill McCollum delivered the keynote speech during the awards luncheon Friday. McCollum discussed the new Government Accountability Project (GAP).



Marion Brechner greets Ken Paulson during the Thursday evening reception.



Patrick Danner and Dan Christensen accepted the 2007 Joseph L. Brechner Freedom of Information Award during a special breakfast Friday morning.

The 2007 FOI Summit offered an opportunity not only to discuss the current condition of open government laws, but also to recognize those whose efforts have helped make Florida's laws the toughest in the nation.

Friday morning, Patrick Danner and Dan Christensen of *The Miami Herald* were recognized for their reporting on "supersealed" cases in Broward County. Their reporting spurred statewide reforms in case-sealing practices.

At the awards luncheon Friday, following a keynote address by Florida Attorney General Bill McCollum, The Brechner Center inducted six individuals into its Florida Freedom of Information Hall of Fame and recognized the Top 30 FOI stories of the past 30 years.

The six Hall of Fame inductees are: James C. Adkins Jr., Marion B. Brechner, Talbot "Sandy" D'Alemberte, H.G. "Buddy" Davis, Louis Michael "Skip" Perez and Gregg D. Thomas.

The late James C. "Jimmy" Adkins Jr., a Florida Supreme Court justice, earned the nickname "Justice Sunshine" for his interpretations of Florida's fledgling Open Meetings Law in favor of the public.

Philanthropist and former media executive Marion B. Brechner was inducted for her continuing support of FOI and the First Amendment.

President Emeritus of Florida State University Talbot "Sandy" D'Alemberte was a key figure in several important events in the history of freedom of information in Florida – including the passage of the Sunshine Law and the success of the cameras in the courtroom experiment.

Longtime journalism professor at the

University of Florida and a Pulitzer-Prize winning editorialist, the late H.G. "Buddy" Davis Jr. played a key role in the development of Florida's Open Meetings Law, which he helped draft.

Louis Michael "Skip" Perez, executive editor of *The Lakeland Ledger*, has consistently fought for the right to government information and been a leader in Florida's FOI movement.

Gregg D. Thomas is a media attorney with the law firm Thomas & LoCicero in Tampa. Thomas has spent the past 30 years advocating for the media in courtrooms across the state and in the U.S. Supreme Court.

More information about the 2007 class of Hall of Fame inductees can be found at www.brechner.org.

In addition to the Hall of Fame presentations, publications and authors of the "Top 30" stories of the past 30 years were honored. The 11 publications publishing the stories were: *South Florida Sun-Sentinel*, *The Miami Herald The Palm Beach Post*, *Florida Times-Union*, *Fort Myers News-Press*, *Gannett News Service*, *Orlando Sentinel*, *Florida Trend*, *The Lakeland Ledger*, *The Tampa Tribune*, and *St. Petersburg Times*.

Several individual journalists were also on hand to receive recognition for their industrious reporting: Joe Adams, Cynthia Barnett, Dan Christensen, Patrick Danner, George Diaz, John Dunbar, Sydney Freedburg, Margo Harakas, family members of the late Mike Hoyem, Connie Humburg, Jim Leusner, Pat Moore, Steve Patterson and Paige St. John.

More information about the winning stories in the "Top 30" and their authors is available at www.brechner.org/top30.

Students honor retiring professor

Brechner Center Executive Director Prof. Sandra Chance ended the FOI Summit with a surprise presentation of a lifetime achievement award to Dr. Bill F. Chamberlin for his mentoring and work in freedom of information. Prof. Chamberlin (pictured at right with his wife, Jeanne, and a group of his current and former students), founding director of The Brechner Center and Joseph L. Brechner Eminent Scholar, is retiring in 2008.



PCOC loses another appeal

LAKELAND – Members of the Polk County Opportunity Council (PCOC) may have reached the end of the road in their effort to overturn a ruling that they violated the Open Meetings Law. The 2nd District Court of Appeal rejected the PCOC's motion for rehearing. Because the 2nd DCA did not issue a written opinion, the PCOC has nothing to appeal to the Florida Supreme Court.

The civil infractions against the 10 board members stemmed from a September 2005 meeting where the board paused a public meeting to discuss reprimanding its executive director and then resumed the public meeting.

The PCOC works to serve the area's socioeconomically disadvantaged communities, mainly through the Head Start program. However, the PCOC has lost its federal and state funding.

A county judge fined each member \$250 for the civil infraction, plus \$28.60 in court costs. A circuit court judge upheld the ruling, as did the 2nd DCA. The PCOC has paid \$20,000 toward legal expenses. The remaining costs have been covered by the PCOC's insurance.

PCOC attorney Bill Grob contends that the 10 defendants should have been granted a jury trial, and that the determination that board members, who volunteer, are public officers violates the Florida Constitution.

Husband ousted from wife's panel

LEE COUNTY – A county commissioner is seeking a replacement for one of his advisory board members, citing a presumption of Sunshine Law violations when a husband and wife serve on the same board.

Commissioner Frank Mann wants to replace Ernie Hartman, chairman of the Lehigh Acres Streetlight District.

Hartman has served on the board since 1992. Hartman's wife, Dolly, joined the board in 1994. But Commissioner Mann said it was not until 2007 that he realized there was a

problem.

"Fundamentally, I don't think it's a good idea or good policy," Mann said. "You automatically get into questions about violations of the Sunshine Law."

Hartman, who was reappointed by Mann in January, said he has never spoken with his wife about board issues outside of meetings.

"We don't discuss anything other than what's at the meeting," Hartman said. "That would be a violation of the Sunshine Law. We're volunteers. We're not paid. It's never been a problem before."

City moves to settle Sunshine suit

JACKSONVILLE – The Jacksonville City Council wants to settle a lawsuit that alleges five council members violated the Sunshine Law when they met at a restaurant for dinner and a tour.

The restaurant, Arielle's, was seeking a zoning exception from the council so it could serve alcohol until 2 a.m. The exception was opposed by neighbors but eventually approved by the council.

Donald Smitha, whose dental practice is across the street from Arielle's, filed the suit in 2005. Smitha's suit alleges council members Reggie Fullwood, Suzanne Jenkins, Mia Jones, Pat Lockett-Felder and Lake Ray violated the law because their dinner was not noticed to the public, no minutes were taken, and the meeting

was not disclosed at a regular council meeting.

The lawsuit requests invalidation of the council's decision to grant the exception. Smith is also seeking legal fees. A settlement could allow the city to resolve the matter without admitting guilt or paying legal fees. The city is now willing to repeal its decision and hold a new hearing.

"It was a recognition that it's a lot simpler and more final to handle it this way than it is to go through the time and expense of [a] lawsuit," said Jacksonville Deputy General Counsel Tracey Arpen.

Arielle's owner, Aaron Hill, told *The Florida Times-Union* that the restaurant has been a good neighbor and made improvements to the building.

Council upset over letter to editor

BRONSON – A month before he was fired, the town attorney for Bronson expressed his concerns about potential Sunshine Law violations in a letter to the local newspaper. In a letter to the *Chiefland Citizen*, Town Attorney James A. Cornelius, who was also the city manager, wrote that two town council members met at an old water plant, where they made official decisions. Cornelius also alleged that a council member illegally gave away old water meters. Cornelius did not name specific council members in his letter.

Bronson Mayor Beatrice Mongo said the matter had been blown out of proportion and that Cornelius should have approached the council before contacting the media. "That wasn't the right way to

go about it," she said.

Council members defended the meeting at the water plant, where two members reportedly approved additional fencing at the site.

Vice Mayor Aaron Edmondson said he allowed old water meters to be removed free of charge to avoid removal costs. But some citizens objected to the practice, questioning whether the scrap could be worth money for the town. Mongo said a new policy would be created.

Cornelius defended his letter, maintaining that he has to walk a fine line between serving the Town Council and the public. The *Chiefland Citizen* reported that Cornelius, who was hired in January 2007, will seek compensation for the remainder of his two-year contract.

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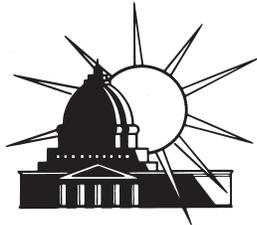
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Government must learn from its mistakes at Guantanamo

Five years have passed since the first detainees arrived at Guantanamo Bay, yet the American government seems unwilling to learn from mistakes made at its faraway outpost. I spent nearly four years covering Guantanamo – an assignment punctuated by *The Associated Press*' legal victory that shed a light onto the otherwise opaque world of Guantanamo and forced the Pentagon to name hundreds of detainees it had held and to release thousands of pages of secret tribunal testimony.

The dispatches from the prison camp have resonance today even though I'm posted now in Britain – an ocean away from the barbed wire and blinding sunshine of the camp that opened in early 2002, a little over four months after the Sept. 11 terror attacks. Although roots of extremism have been

The Back Page

By Paisley Dodds

ever will in our lifetimes.

The key question is how to proceed in the fight for security while forcing the government to be transparent and refusing to forfeit the ideals that set us apart from others. This is the moment to be asking tough questions.

While the courts are challenging Guantanamo's shaky legal foundations, there is no immediate end in sight for the detention camp that is still shrouded in secrecy. Journalists are no longer allowed to witness tribunals for detainees the government views as "high-value." Lawyers too, are still banned from many of the hearings. There are seldom independent observers. The public is asked to take the government's word for what happens in the secret hearings.

There is little that can be done without relentless questioning and arduous legal battles, but it is not hopeless. In these challenging times, governments and militaries should be put under the highest scrutiny. People should be asking why more than ever before.

The threat of terrorism makes it more necessary for the public to be informed. People should know who is being held in U.S. regardless of whether they have been charged or if they are



Paisley Dodds

foreign nationals. The public has a right to know the un-redacted story. About 380 men are still being held at Guantanamo Bay, most accused of links to al-Qaida or the Taliban. Many have been held at the prison for more than five years. Only three have been charged with crimes. The government has yet to release an audio tape where the self-proclaimed mastermind of the Sept. 11, 2001 attacks allegedly confessed to some 31 plots. It has been reluctant to release any audio or video of the detainees. The Pentagon has said it fears releasing the tape of Khalid Sheikh Mohammed from a secret March hearing could boost morale for his supporters. Only a censored transcript has been released with redacted accounts of alleged torture at the hands of the CIA. After so long, what is the government really afraid of?

Yet it is Guantanamo—not the terror trials held in U.S. federal courts—that makes world headlines. Judges recently ruled that the Pentagon could not prosecute Salim Ahmed Hamdan and Omar Khadr because they had not first been identified as "unlawful" enemy combatants, as required by a law passed last year. Republicans and the White House pushed through legislation last year authorizing the war-crimes trials after the Supreme Court threw out President Bush's previous system as illegal and in violation of international treaties. The proceedings continue to draw criticism at home and abroad. And with detainees representing more than 40 countries, the fight cannot be fought unilaterally.

We've seen how terror groups are changing—particularly in Britain where home-grown extremism is on the rise—and we're seeing them mutate around the world. The public has a right to know about this threat, and it is crucial that journalists keep fighting to expose that truth.

Without transparency, the public is kept in the dark. Without accountability, the United States stands to reverse its hard-won reputation.

Paisley Dodds is London bureau chief for The Associated Press. She won the 2006 Joseph L. Brechtner Freedom of Information Award for her investigations at Guantanamo.